

Study Guide

Week 1

Assessing the Scope of Power and the Proposal for a European FBI

1) Introduction

As the looming threat to European security becomes a reality, the European Council has decided to act and try to find a solution. Delegates from the European Council will critically assess a Union agency's current functions and jurisdictional limits and debate the contentious idea of expanding its role to form a centralised European policing authority with executive powers. This proposal, highlighted by Armin Laschet in 2021, who advocated for transforming Europol into a "European FBI" focused on cyber self-defence, will be explored regarding feasibility, implications, and potential structure under specific circumstances. This discussion is pivotal as it seeks to navigate the complexities of enhanced cross-border policing powers within the European Union.

The discussion for this workshop will revolve around specific fields of competency and how they should be delegated since no EU member state is willing to give up full power for policing to the EU. Your focus will be on specific fields, such as cybercrime.

2) Key Concepts and Terms

Europol

Europol, the European Union Agency for Law Enforcement Cooperation, is the EU's central hub for combating serious international crime and terrorism.

Europol's primary role is to enhance cooperation among EU member states by facilitating information exchange, providing operational support, conducting strategic analyses, and coordinating joint operations. It focuses on areas such as counterterrorism, cybercrime, drug trafficking, human trafficking, and financial crimes.

Europol is currently the significant policing power of the European Union and has the fundamental structure to become the "European FBI." It currently provides member states with all the data and analysis needed to act but has no enforceable power.

Frontex

Frontex, the European Border and Coast Guard Agency, is an EU agency tasked with managing and securing the external borders of the Schengen Area. Frontex coordinates with EU member states to control migration, prevent cross-border crime, and conduct search and rescue operations.

The agency is crucial in strengthening border security, analysing border risks, and assisting member states during increased migratory pressure, ensuring that EU border management remains efficient and compliant with human rights standards.

Interpol

Interpol, the International Criminal Police Organization, is an international agency that facilitates cooperation and information sharing among police forces from 195 member countries to combat transnational crime and terrorism.

Interpol supports law enforcement agencies worldwide by providing a range of services, including databases of criminal information, support for investigations, and issuing notices for fugitives and security threats.

Its core mission is to help create a safer world by bridging gaps between police forces across different jurisdictions, ensuring that borders are not barriers to law enforcement efforts.

EU foreign policy

The EU's joint foreign and security policy, designed to resolve conflicts and foster international understanding, is based on diplomacy and respect for international rules. Trade, humanitarian aid, and development cooperation are important in the EU's international role. The EU has no standing army and relies on forces contributed by EU countries. The EU can send missions to countries with security issues to monitor and preserve law and order, participate in peacekeeping efforts, or provide humanitarian aid to affected populations.

Internal Security

Internal security in the context of EU member states refers to the responsibility of each national government to protect its citizens and maintain public order within its borders. This involves law enforcement agencies, such as the police, intelligence services, and other security forces, working to prevent and respond to threats like crime, terrorism, and civil unrest, ensuring the safety and stability of the state. Each member state has its own legal frameworks, institutions, and policies to manage and enforce internal security, though they may also cooperate with other EU countries and agencies like Europol for cross-border or serious/terrorist crime issues.

Crimes which cannot be located (such as cybercrime)

The crimes which cannot be located in a specific geographical area are an issue today. Many member states have issues with cyber threats from hackers or massive online frauds committed by criminal networks. Fighting these crime might look straightforward, but it is anything but. These crimes, particularly the criminal networks behind them, cannot be pinned to one nation of origin, so it

is impossible to decide which state receives jurisdiction on the matter and can fight and dedicate its resources to a solution.

Sovereignty

Sovereignty is the supreme authority of a state to govern itself, free from external interference. It involves full control over a state's laws, territory, and population and is recognised by other states. Sovereignty includes both internal aspects, like creating and enforcing laws, and external aspects, such as conducting foreign affairs independently. It is a core principle in international relations, emphasising a state's right to self-determination and non-interference by others.

3) Background Information

The discussion of whether or not there should be European policing power with executive powers has been going on for many years. Politicians from all over the European Union have brought up the need and benefits of this initiative over the years. Many member states have also opposed this initiative due to the fear of having to give up executive power to the EU in the context of sovereignty.

No member state is willing to completely give up their sovereignty regarding policing, but many are willing to transfer the power to the EU in specific issues such as cyber crime.

The Maastricht Treaty, signed in 1992, formally established the European Union and introduced the concept of a Common Foreign and Security Policy (CFSP). While policing remained largely within national jurisdictions, the treaty recognised the need for increased cooperation in areas like drug trafficking, terrorism, and organised crime. The establishment of Europol in 1998 marked a milestone, as it became the EU's first agency dedicated to law enforcement cooperation. However, its powers were initially limited to facilitating information exchange between national police forces.

The Treaty of Amsterdam, which came into effect in 1999, integrated the Schengen acquis into the EU framework, further enhancing cooperation in justice and home affairs. This period also saw the expansion of Europol's mandate, allowing it to support member states in preventing and combating serious international crime.

The Lisbon Treaty, which entered into force in 2009, marked a significant consolidation of executive power in policing within the EU. It provided a legal basis for enhanced cooperation in police and judicial matters, including developing an Area of Freedom, Security, and Justice (AFSJ). The treaty also introduced the European Arrest Warrant (EAW), which streamlined the extradition process between member states. Europol's role was further strengthened, transforming it into a fully-fledged EU agency with the power to initiate and coordinate investigations.

In November 2019, Frontex, the border control organisation of the European Union, became the first body with executive power. This set a landmark for future organisations to learn from the flaws and be able to prepare for them. It shows that the EU is indeed prepared for the possibility of given an organisation executive powers

In recent years, the EU has faced new challenges that have influenced the evolution of executive power in policing, including terrorism, cybercrime, and migration crises. The EU has responded by

further enhancing its law enforcement capabilities, including establishing the European Public Prosecutor's Office (EPPO) in 2021, which has the authority to investigate and prosecute crimes against the EU's financial interests.

4) Major Stakeholders

Germany:

Germany is experiencing the highest number of cyber-attacks due to it being one of the largest economies in the EU. It has experienced numerous high-profile cyberattacks, including ransomware attacks on critical infrastructure, businesses, and government agencies.

France:

France is the second most common target for cyber attacks in the EU. The country has faced increasing cyber threats, particularly against its government institutions, businesses, and critical infrastructure. State-sponsored hackers, ransomware attacks, and cyber espionage have targeted the country, particularly its technology and defence sectors.

Netherlands:

The Netherlands is the fastest-rising country on this list, with a highly digitalised economy, online commerce, and financial service involvement. The main issues they are facing are data breaches and ransomware attacks.

Italy:

Italy has faced increasing cyber threats, particularly from organised crime groups that use cybercrime as a tool for financial gain. The country has also been targeted by ransomware attacks, data breaches, and cyber espionage, especially in sectors like finance, healthcare, and government.

Spain:

Spain has seen a rise in cybercrime, particularly ransomware attacks and data breaches. The country's financial services, telecommunications, and government sectors have been targeted by cybercriminals.

5) Discussion Points

Resource allocation:

Countries with limited resources for cybersecurity could benefit from the additional support and expertise provided by Europol, leading to a more balanced level of protection across the EU.

This could also spark issues, as it would mean that the entire funding distribution would have to be recalculated to fit this new work-frame.

Sovereignty:

The extent of the powers allocated to the EU is significant. In which fields will the EU gain competence, and in which will it remain a supportive role?

How much power does each state need to delegate to the EU, and how beneficial is it in the end?

Mandates:

The most crucial discussion will be which mandates will be delegated to the EU and to what extent. Make sure to clarify how much competency will be given to the EU in each field.

Think of Frontex, the only EU agency with the power to force member states to cooperate in their field.

This could also raise a lot of controversy since Mediterranean countries are now pressuring Frontex to change their systems and policies.

National Priorities versus EU priorities:

One of the most significant conflicts will be the priorities for each member state, and the more conservative countries will want to be assured that their priorities are still met and not left backlogged.

EU Criminal Law

Currently, there is no such thing as one EU Criminal Law. For example, the definition of an organised crime, described in Article 2A of the UN Convention Against Transnational Organised Crime, is implemented differently in each member state.

This confirms that currently, the framework of the EU is not fit for complete EU executive law enforcement in the area of organised crime and terrorism.

6) Differing perspectives and international impact

For a European executive power

The perspective favouring establishing a European executive power over security, such as granting Europol executive control, rests on the idea that these threats are inherently transnational and require a unified response. Supporters argue that individual EU member states cannot fully address crime's complex and evolving nature, no matter how advanced their security measures are.

A centralised European authority would allow for more efficient resource allocation, streamlined intelligence sharing, and coordinated response efforts across borders, which are critical in the fight against threats that often target multiple countries simultaneously.

By consolidating security efforts under a single executive power, the EU could enhance its collective defence capabilities, ensure consistent protection across all member states, and respond more rapidly and effectively to large-scale criminal or terrorist incidents. This approach is necessary to safeguard the EU's digital infrastructure and maintain the security and stability of its interconnected economies and societies.

Partially for a European executive power

A perspective that partially supports establishing European executive power advocates for a balanced approach. Europol is granted authoritative control in specific areas, such as cybercrime, but not across all domains. This view recognises the benefits of a centralised effort in combating crime, particularly in cases involving cross-border criminal networks, ransomware attacks, and online fraud, where coordinated intelligence sharing and unified action can significantly enhance effectiveness. Proponents of this position believe that Europol's expertise and resources could be precious in these areas, allowing for more efficient and comprehensive responses to threats that are difficult for individual member states to tackle alone.

However, this group also emphasises the importance of maintaining national control over other security aspects, such as protecting critical infrastructure and managing national cyber defence strategies, where local knowledge and quick decision-making are crucial. By limiting Europol's authoritative power to specific fields like cybercrime, this approach seeks to strike a balance between the need for EU-wide coordination and the preservation of national sovereignty, ensuring that the unique security needs of each member state are still respected while benefiting from collective European efforts in targeted areas.

Against a European executive power

The perspective against establishing a European executive power over security, such as giving Europol authoritative control, is grounded in concerns about national sovereignty and the potential loss of autonomy in handling sensitive security matters.

Opponents argue that security needs and threats vary significantly across EU member states, and a one-size-fits-all approach might not address each country's unique challenges. They worry that a centralised authority could lead to bureaucratic inefficiencies, slow response times, and disconnect local policing force needs as well as EU-wide strategies.

Additionally, there is concern that national governments would have less control over their critical infrastructure and the protection of sensitive data, potentially compromising their ability to act swiftly and decisively in the face of emerging threats. Critics of this approach believe that security should remain primarily within the authority of national governments, which are better positioned to understand and respond to their countries' specific risks and priorities while still cooperating with EU institutions more flexibly and collaboratively.

7) Conclusion and Next Steps

The European Council's consideration of expanding Europol into a centralised European policing executive power reflects the urgent need to address cybercrime and other transnational threats to European security. While Europol currently serves as the EU's primary law enforcement agency, the proposal to transform it into a "European FBI" raises concerns about balancing EU-wide initiatives with member states' national sovereignty. Understanding these dynamics is essential for students studying cross-border policing within the EU.

Treaties like Maastricht, Amsterdam, and Lisbon have historically shaped the EU's approach to justice and security, increasing cooperation while respecting national sovereignty. As delegates review these developments, they should consider the challenges of granting Europol more enforceable powers, particularly in complex areas like cybercrime. The focus will be on how much authority member states are willing to delegate to the EU and the potential trade-offs involved.

In preparation for discussions on EU policy implementation, delegates should analyse how to balance collective security goals with the diverse priorities of member states. This includes exploring strategies to strengthen the EU's ability to combat key challenges like cybercrime, terrorism, and organised crime while preserving national interests and sovereignty.

Useful links

Links for research:

1. <https://www.statewatch.org/media/1583/eu-europol-renew-europe-position-paper-4-12-20.pdf>
2. <https://www.europol.europa.eu/about-europol>
3. <https://www.europol.europa.eu/about-europol/our-thinking#:~:text=As the EU's law enforcement,organised crime%2C cybercrime and terrorism>
4. <https://www.politico.eu/article/armin-laschet-germany-chancellor-climate-europol-merkel/>
5. <https://www.europol.europa.eu/about-europol/data-protection-transparency/europol-regime-in-world-of-data-protection#:~:text=Europol's data protection legal framework,15 regulating the use of>
6. <https://debatingeurope.eu/activity/would-a-european-fbi-help-prevent-terror-attacks/>
7. <https://www.realinstitutoelcano.org/en/analyses/europol-and-the-european-criminal-intelligence-model-a-non-state-response-to-organised-crime-ari/>
8. https://european-union.europa.eu/institutions-law-budget/institutions-and-bodies/search-all-eu-institutions-and-bodies/europol_en
9. <https://www.youtube.com/watch?v=DsikM0SzfEg&t=174s>
10. https://european-union.europa.eu/priorities-and-actions/actions-topic/foreign-and-security-policy_en
11. http://www.esisc.org/upload/publications/opinions/OPINION_FBI_En.pdf
12. https://www.aldeparty.eu/renew_europe_from_europol_towards_a_european_fbi
13. <https://digit.site36.net/2020/08/04/europol-regulation-towards-a-european-fbi/>
14. <https://www.european-police.eu/2024/05/10/is-europe-overwhelmed-by-migrationnext-years-european-police-congress-will-take-place-from-20-to-21-may-click-here-to-register-is-europe-overwhelmed-by-migration/>

15. <https://aei.pitt.edu/79011/1/Fabbrini.pdf>